IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10425 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MARUTIDHAM COOP HOUSING STY LTD, THR'H CHAIRMAN

Versus

DY COLLECTORoS, STAMP DUTY VALUATION ORGANISATION

Appearance:

1. Special Civil Application No. 10425 of 1999

MR MC BHATT for Petitioner No. 1

Mr. PD Bhate, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/12/2004

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner-society has challenged the legality and validity of the order passed by the appellate authority respondent No.3 dated 13th July 1999 in partly allowing the appeal preferred by the petitioner and modifying the order passed by the

respondent No.1 dated 14th August 1996 by which the respondent No.2 in exercise of powers under Section 32-A of the Bombay Stamp Act, 1958 {"the Act" for short} has passed the order directing the petitioner to pay an amount of Rs. 3,63,010, i.e., Rs. 2,42,010 by way of deficit stamp duty and Rs. 1,21,000 by way of penalty.

2. Shri MC Bhatt, learned advocate appearing on behalf of the petitioner has submitted that number of contentions were raised before the appellate authority and the same were in the appeal memo but the learned advocate appearing for the petitioner Association was not permitted to make the submissions which are reflected in the appeal memo, more particularly with regard to the principle of dual ownership where the land is of "A" the structure on the land is of "B" and the appellate authority told the learned advocate for the petitioner that as similar type of arguments have been canvassed in another case of one Nageshwar Cooperative Housing Society Ltd he is aware of the same and he will consider the same. However in the impugned order nothing has been dealt with and straightway without considering the said arguments which are raised in the appeal memo with regard to dual ownership the impugned order has been passed. Considering the order passed by the appellate authority and the reasoning given it appears that the points which were raised in the appeal memo are not dealt with and if dealt with then they are not discussed. Shri Bhatt, learned advocate submitted that the question with regard to dual ownership where the petitioner has purchased the land only and the super-structure is constructed by the members independently goes to the root of the matter and the same was required to be considered by the appellate authority which has not been considered.

3. Without expressing any opinion on merits with regard to the said argument, in view of the fact that the appellate authority has not considered the same and dealt with the same the order passed by the appellate authority dated 13th July 1999 is required to be quashed and set aside and the matter is required to be remanded to the appellate authority for considering the same afresh in accordance with law and on merits and after considering the submissions which are made in the appeal memo. Accordingly, the impugned order dated 13th July 1999 passed by the respondent No.3 in Appeal No. 18/97 is quashed and set aside. The matter is remanded to the respondent No.3 appellate authority for passing a fresh order in accordance with law and on merits after giving opportunity to the petitioner, and for considering the contentions which are raised in the Appeal Memo. It will

be open for the petitioner to file additional grounds to the appeal and the same may also be considered by the respondent No.3 while passing the final order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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